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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,513	09/08/2003	Martin Reed Bodley	00630.0320-US-D3	9182
7590	10/26/2005		EXAMINER	
Michael B. Lasky Altera Law Group Suite 100 6500 City West Parkway Minneapolis, MN 55344-7704			CHIANG, JACK	
			ART UNIT	
			PAPER NUMBER	
			2642	
DATE MAILED: 10/26/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/657,513	Applicant(s) BODLEY ET AL.	
	Examiner Jack Chiang	Art Unit 2642	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-17, 25 and 26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-17, 25 and 26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

CLAIMS

1. Claims 13-17 and 25-26 are pending.

Art Rejection

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 13-14, 26 are rejected under 35 U.S.C. 102(a) as being anticipated by Weinans (WO 01/37524 A1).

Regarding claim 13, Weinans shows:

A wearable headset communication unit comprising a housing (housing 1), a reversable earhook (7) pivotally attached to said housing (1) and, capable of reversing between left and right ear positions (figs. 1a and 1b), function switches (9, 10) on said housing (1) for adjusting features of the unit's performance, a detector (page 6, lines 3-5) for detecting the position of said earhook (7), circuitry (page 4, lines 20-23) responsive to said detector (page 6, lines 3-5, pages 5, lines 3-6) for changing the operation of said

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function switches (9-10) in response to detection of whether the earhook (7) is on the wearer's right or left ear (figs. 1a, 1b), and wherein the functions switches (9, 10) include upper and lower switches (9, 10), and wherein said function of said upper switch is swapped with said lower switch (see 9, 10 in figs. 1a, 1b) when said earhook (7) is switched from right to left ear usage (figs. 1a, 1b).

Regarding claim 14, Weinans shows:

said function of said upper switch is swapped with said lower switch (see 9, 10 in figs. 1a, 1b) when said earhook (7) is switched from right to left ear usage (figs. 1a, 1b) in response to detection of the orientation of the earhook (7, page 6, lines 3-5, pages 5, lines 3-6).

Regarding claim 26, Weinans shows:

A wearable headset communication unit comprising a housing (housing 1), a reversible earhook (7) pivotally attached to said housing (1) and, capable of reversing orientations of the earhook (7) between left and right wearing positions (figs. 1a and 1b), function switches (9, 10) on said housing (1) for adjusting features of the unit's performance, means (page 6, lines 3-5) responsive to the orientations (figs. 1a, 1b) of the earhook (7) for detecting whether the earhook (7) is configured for user's left or right ear (figs. 1a, 1b); and

circuitry (page 4, lines 20-23, page 6, lines 3-5, pages 5, lines 3-6) responsive to said detector (page 6, lines 3-5, pages 5, lines 3-6) for changing the operation of said

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function switches (9-10) in response to detection of the earhook (7) orientation (figs. 1a, 1b).

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 15-17 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weinans in view of Yang (US 6047076).

Regarding claims 15-17 and 25,

A wearable headset communication unit comprising a housing (housing 1), a reversible earhook (7) pivotally attached to said housing (1) and, capable of reversing between left and right ear positions (figs. 1a and 1b), function switches (9, 10) on said housing (1) for adjusting features of the unit's performance, a detector (page 6, lines 3-5) for detecting the position of said earhook (7), circuitry (page 4, lines 20-23) responsive to said detector (page 6, lines 3-5, pages 5, lines 3-6) for changing the operation of said function switches (9-10) in response to detection of whether the earhook (7) is on the wearer's right or left ear (figs. 1a, 1b), and wherein the functions switches (9, 10) include upper and lower switches (9, 10);

wherein said function of said upper switch is swapped with said lower switch (see 9, 10 in figs. 1a, 1b) when said earhook (7) is switched from right to left ear usage (figs. 1a, 1b);

wherein the housing (1) includes a hinge which engages the earhook (see mounting of 7).

Weinans differs from the claimed invention in that the earhook includes a first portion (mounting of Weinans' earhook 7), but does not include a second portion, or an asymmetrical earhook and its detection.

However, Yang teaches providing a symmetrical/asymmetrical earhook (col. 4, lines 21-22).

Hence, the concept of providing an earhook is well taught by Weinans, therefore, it would have been obvious for one of ordinary skill in the art to modify Weinans with a symmetrical/asymmetrical earhook (col. 4, lines 21-22 in Yang) as taught by Yang, such that the modification provides greater comfort to the earphone user, and not only can the earphone be worn on the left or right ear, but the earphone can also be adjusted to fit the ear of almost any user (col. 2, lines 58-64 in Yang).

Further, detecting the left or right ear mounting of the earhook is a design criteria in Weinans (page 6, lines 3-5 in Weinans), therefore, when Weinans' earhook is modified with the asymmetrical earhook taught by Yang (col. 4, lines 21-22 in Yang, see comments above). This design criteria remains the same in Weinans, therefore, the detector is detecting the asymmetrical earhook in the combination of Weinans and Yang.

ARGUMENT

6. In response to the remarks (pages 7-8), Hahn and Vonlanthen have been withdrawn. Therefore, no further discussion is made regarding the above references.

In page 7, last two paragraphs, applicant argues that "... document ... programmability of buttons 9 and 10 ... but there is no disclosure of how the orientation of the earhook will instruct the switch to change switch orientations". The examiner does not believe that one of ordinary skill in the art would have any problem of using Weinans' teaching to produce a programmable buttons 9 and 10 according to the orientations of left or right ear mounting of the earhook (page 6, lines 3-5 in Weinans). In that page 6 of Weinans, it clear teaches that a switch can be actuated automatically depending on the left or right ear mounting of the earhook.

In conclusion, it is believed that claims are anticipated by Weinans.

7. Applicant's arguments with respect to claims 13-17, 25-26 have been considered but are moot in view of the new ground(s) of rejection.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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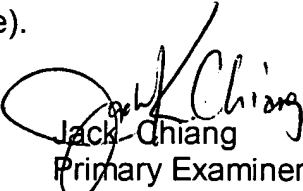
the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack Chiang whose telephone number is 571-272-7483.

The examiner can normally be reached on Mon.-Fri. from 8:00 to 6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ahmad Matar, can be reached on 571-272-7488. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jack Chiang
Primary Examiner
Art Unit 2642